

Court of Appeals Case No. 48185-5-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

JOHN LEY, an individual, JOHN HALLINEN, an individual, GERALD R. HALLE, an individual, MICHAEL & CAROLE KELLEY, husband and wife, MICHAEL CONNER, an individual, LISA ROSS, an individual DEBORAH WARD, an individual PAT ANDERSON, an individual, BRIAN J. ROHAN, an individual, ROBERT NICHOLS, an individual, JOHN BURKE, an individual, ROBERT RAY LARIMER, JR., an individual, MARK HEAGY, an individual,

Appellants,

v.

CLARK COUNTY PUBLIC TRANSPORTATION BENEFIT AREA, dba C-TRAN, a Washington Public Transportation Benefit Area, C-TRAN BOARD COMPOSITION REVIEW COMMITTEE, a statutorily-created special committee, C-TRAN BOARD OF DIRECTORS, GREG ANDERSON, C-TRAN Board of Directors Member, JACK BURKMAN, C-TRAN Board of Directors Member, BART HANSEN, C-TRAN Board of Directors Member, JIM IRISH, C-TRAN Board of Directors Chair, LYLE LAMB, C-TRAN Board of Directors Member, DAVID MADORE, C-TRAN Board of Directors Member, JENNIFER MCDANIEL, C-TRAN Board of Directors Member, ANNE MCENERNY-OGLE, C-TRAN Board of Directors Vice-Chair, JOHN SHREVES, C-TRAN Board of Directors Member, JEANNE STEWART, C-TRAN Board of Director

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DIVISION II
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STATE OF WASHINGTON
BY  DEPUTY

Member, TOM MIELKE, C-TRAN Board of Directors
Member, CONNIE JO FREEMAN, C-TRAN Board of
Directors Member, JEFF HAMM, chief administrative
officer of the Clark County Public Transportation Benefit
Area,

Respondents.

APPELLANTS' OPENING BRIEF

Damien R. Hall, WSBA No. 47688
Email: dhall@balljanik.com
Adele J. Ridenour, WSBA No. 35939
Email: aridenour@balljanik.com
BALL JANIK, LLP
101 SW Main Street, Suite 1100
Portland, OR 97204
Telephone: 503.228.2525
Facsimile: 503.226.3910
Attorneys for Appellants

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I. INTRODUCTION

This appeal involves two major issues. The first issue presented for this Court is procedural: whether, in a multi-party case, a trial court may dismiss all defendants based upon a motion to dismiss filed only by some defendants. The second issue is substantive and involves the scope and breadth of Washington's Open Public Meetings Act ("OPMA"). Specifically, whether the Clark County Public Transportation Benefit Area Board Composition Review Committee ("BCRC")—a statutorily created committee, whose sole function is to periodically review and, where appropriate, make changes to the make-up of the board of directors of Clark County Public Transportation Benefit Area ("C-TRAN")—is subject to Washington's OPMA. At the heart of this second issue is the definition of a "public agency" under the OPMA and whether the BCRC qualifies as one.

Based on this Court's recent interpretation of the types of public/governmental bodies/agencies subject to the OPMA, and the Legislature's stated intent that the OPMA be liberally construed, plaintiffs assert that the BCRC is subject to the Act. Assuming this Court agrees, the third and final issue presented for the Court is whether plaintiffs adequately alleged a claim for declaratory relief against the BCRC, C-TRAN, C-TRAN's individual board of directors, and C-TRAN's chief

executive officer, Mr. Jeff Hamm. Reviewing the pleadings in the light most favorable to plaintiffs and assuming the truth of the allegations presented in the First Amended Complaint, this Court should find plaintiffs adequately stated a claim for declaratory relief against these parties. For these and all the reasons set forth below, plaintiffs request that the trial court's grant of certain defendants' Motion to Dismiss be reversed, and that this case be remanded back for further proceedings on the merits.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred in granting defendants' Motion to Dismiss plaintiffs' claims for declaratory relief.
2. The trial court erred in granting defendants' Motion to Dismiss plaintiffs' claim for a statutory writ of review.
3. The trial court erred in granting defendants Motion to Dismiss plaintiffs' claim for a constitutional writ of review.

B. Issues Pertaining to Assignment of Error No. 1

1. Did the Moving Defendants lack standing to move to dismiss plaintiffs' claim for declaratory relief against the BCRC and Mr. Mielke?
2. Is the BCRC subject to Washington's OPMA?
3. Did plaintiffs properly allege a claim for declaratory relief declaring that the BCRC violated Washington's OPMA?
4. Did plaintiffs properly allege a claim for declaratory relief against C-TRAN and its directors for violation of Washington's OPMA in knowingly taking action in furtherance of an ongoing violation of the OPMA?
5. Did plaintiffs properly allege a claim for declaratory relief against Mr. Jeff Hamm for failing to provide proper notice of the November 2014 BCRC meeting in accordance with Washington's OPMA and RCW 36.57A.055?

C. Issues Pertaining to Assignment of Error No. 2

1. Did C-TRAN, its individual directors, and Mr. Hamm have standing to move to dismiss plaintiffs' claim for a statutory writ of review?
2. Did plaintiffs properly allege a claim for statutory writ of review against the BCRC?

D. Issues Pertaining to Assignment of Error No. 3

1. Did C-TRAN, its individual directors, and Mr. Hamm have standing to move to dismiss plaintiffs' claim for a constitutional writ of review?
2. Did plaintiffs properly allege a claim for constitutional writ of review against the BCRC?

III. STATEMENT OF THE CASE

A. The BCRC

The BCRC is a statutorily created committee under RCW 36.57A.055. It is charged with the responsibility of periodic review of and, where appropriate, changing the make-up of the board of directors of the C-TRAN, a municipal corporation. RCW 36.57A.055; CP 27.

Pursuant to RCW 36.57A.055, the BCRC is to be comprised of designated “representatives of the component counties and cities” making up a public transportation benefit area.

B. The November 18, 2014 Meeting of the BCRC

On November 18, 2014, the BCRC met and decided to alter the existing composition of the board of directors for C-TRAN. CP 27. In making this decision, the BCRC did not issue any written or verbal findings nor did it label its decision “appropriate.” CP 219-239. In fact, the BCRC never created a formal resolution and/or order regarding its decision. *Id.*

The November 18, 2014 meeting took place at the Vancouver Community Library and was scheduled and coordinated by C-TRAN staff. CP 380-384; (APP 1-5). The BCRC was not charged for its library reservation because the purpose of the meeting was listed as “governmental.” CP 401; (APP 6).

In addition to coordinating the location of the BCRC’s meeting, C-TRAN staff requested that notice be published in two local papers, The Columbian and the Battleground Reflector. CP 411-416, CP 480-482; (APP7-9). C-TRAN paid for publication of a meeting notice in The Columbian which read as follows:

PUBLIC NOTICE

C-TRAN BOARD COMPOSITION
REVIEW COMMITTEE MEETING

The C-TRAN Board Composition Review Committee Meeting will be held on Tuesday, November 18, 2014 at the Vancouver Community Library, Columbia Room, 901 C Street, Vancouver, Washington. The Board Composition Meeting will be called to order at 4:00 p.m.

Note: Persons requiring an interpreter impaired at a C-TRAN Board meeting should contact Debbie Jerman, C-TRAN's Executive Assistant/Clerk of the Board, at 696-4494, or TTY 695-2760, 24 hours prior to the meeting so arrangements can be made.

CP 480-482.

C-TRAN had been paying for publications in The Columbian on behalf of the BCRC dating back to 2013. CP 405-474.

C. January 2015 C-TRAN Board Meeting

On January 13, 2015, the newly reconstituted board of directors for C-TRAN met to conduct business. CP 28. During that meeting, director David Madore stood up and proclaimed that: (1) the meeting of the BCRC had been held in violation of Washington's OPMA, and (2) the C-TRAN board should hold off on conducting any further business until the BCRC

ratified its decision under a properly noticed meeting under Washington's OPMA. CP 245-246; (APP 11-12). The C-TRAN board ignored this warning and ultimately decided to continue conducting business. CP 247; (APP 13).

The C-TRAN board has been continuing to conduct business for over a year under the reconstituted C-TRAN board of directors despite receiving several notices the BCRC's November 2014 meeting violated the OPMA. CP 6-7, CP 260-263. The BCRC has never met again to ratify the decision it reached during the November 2014 meeting.

D. The Trial Court Proceedings

Plaintiffs filed their initial complaint on April 22, 2015. CP 28. Plaintiffs thereafter filed an amended complaint on June 22, 2015, adding Mr. Tom Mielke and Ms. Connie Jo Freeman as defendants to the case. CP 1. (APP 26) The amended complaint included claims for declaratory relief, as well as for claims for statutory and constitutional writ of review. The statutory and constitutional writ of review claims were solely directed to the BCRC. The declaratory relief claims were against all defendants. Plaintiffs requested a declaratory judgment that defendants had violated one or more provisions of the OPMA, or in the case of Mr. Hamm, his obligations to provide proper notice of the BCRC's November 2014 meeting under the OPMA and RCW 36.57A.055.

On July 30, 2015, defendants C-TRAN, Jeff Hamm, Greg Anderson, Jack Burkman, Bart Hansen, Jim Irish, Lyle Lamb, David Madore, Jennifer McDaniel, Anne McEnery-Ogle, John Shreves, and Jeanne Stewart moved to dismiss each of plaintiffs' claims, including those directed against the BCRC and C-TRAN director, Mr. Tom Mielke. CP 20-51. Ms. Connie Jo Freeman thereafter joined in their motion. CP 297-298. Defendants C-TRAN, Jeff Hamm, Greg Anderson, Jack Burkman, Bart Hansen, Jim Irish, Lyle Lamb, David Madore, Jennifer McDaniel, Anne McEnery-Ogle, John Shreves, Jeanne Stewart, and Connie Jo Freeman are hereafter collectively referred to as the "Moving Defendants."

Plaintiffs filed a written opposition to the Moving Defendants' Motion to Dismiss. CP 352-367. A hearing was held on the Moving Defendants' motion to dismiss on August 6, 2015. CP 15. During that hearing, plaintiffs argued that if the Moving Defendants' position were adopted, the BCRC could hold its meeting in complete secrecy, without any public notice or opportunity for review. RP 22-23.

MR. HALL: Right. Then the statute establishing the BCRC is vague as -- as is, without the overlay of the OPMA. The decision to change the constitution of the C-TRAN Board of Directors could happen in any number of venues. As you've heard today, all their real -- all it says in this -- that particular statute is that 20 days' notice be

given. And as you've heard today that they're -- they're -- C-TRAN has argued that that doesn't have to be any particular kind of notice. So that notice doesn't have -- according to defendants' arguments, that that notice doesn't have to be published in a newspaper of local circulation. That notice could be posted on a door at C-TRAN's office. So then -- then -- like, if you take that and add on their argument that -- of the OPMA doesn't apply, that notice could be of a meeting that happens in an online chat room. That notice could be of a meeting that happens --

THE COURT: In the men's room.

MR. HALL: -- by conference call or in the men's room, yeah. Wherever they can get together a quorum.

RP 22-23.

Following this and other argument, the Honorable David E. Gregerson, issued an oral ruling dismissing each of plaintiffs' claims, including those directed to the BCRC and Mr. Mielke. RP 57. Pertinent to this appeal, Judge Gregerson's ruling consisted of the following statement:

THE COURT: All right. Thank you, Counsel. It's a very interesting issue, well-briefed and argued by both sides. And I thank you for the robust and interesting argument here this morning. At the end of

the day, you know, when I look at this case, it does tend to -- and while I appreciate, you know, creative advocacy and novel theories, I do find and conclude at the end of the day that dismissal is appropriate under Rule 12 for the reasons stated by Mr. Ryan and briefed and argued. That, basically, this does, at the end of the day, seem to be a situation where a political decision was made. The question is whether there's a Court remedy for that. And I'm unable to find violations of the statutes that have been argued and pleaded by the plaintiff under these circumstances. So the Court will grant the order. I think the requested findings by Mr. Ryan are consistent with what has been pleaded and argued, and what are the conclusions of this Court. So I'd ask that you prepare a -- an appropriate order to that effect.

RP 57.

On September 23, 2015, the trial court entered an order granting the Moving Defendants' Motion to Dismiss all claims. CP 505-508. Plaintiffs timely filed a Notice of Appeal on October 21, 2015. CP 502; (APP 37-40).

IV. STANDARD OF REVIEW

This Court reviews the trial court's decision to grant a motion to dismiss *de novo*. *Gaspar v. Peshastin Hi-Up Growers*, 131 Wn.App. 630, 634, 128 P.3d 627 (2006). Dismissal under Rule 12(b)(6) for failure to

state a claim is only appropriate “if it is beyond doubt that the plaintiff can prove no facts that would justify recovery.” *Id.* at 635. On review, this Court “must presume that the plaintiff’s allegations are true and may consider hypothetical facts that are not included in the record.” *Id.*

Motions to dismiss are to be granted “sparingly and with care” and, as a practical matter, “only in the unusual case in which plaintiff includes allegations that show on the face of the complaint an insuperable bar to relief.” *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007) citing *Hoffer v. State*, 110 Wn.2d 415, 420, 755 P.2d 781 (1988)(internal quotation marks omitted) (quoting *Orwick v. City of Seattle*, 103 Wn.2d 249, 254, 492 P.2d 793 (1984)) and (quoting 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 1357, at 604 (1969)). A plaintiff will be found to have adequately stated a claim for relief if it is possible that facts could be established that would support relief. *Kumar v. Gate Gourmet, Inc.*, 180 Wn.2d 481, 489, 325 P.3d 193 (2014)(emphasis added).

V. SUMMARY OF ARGUMENT

The trial court erred in dismissing plaintiffs’ claims for declaratory relief and statutory or, alternatively, constitutional writ of review. As a matter of law, the Moving Defendants did not have standing move to dismiss any of the claims against the BCRC or Mr. Mielke. Furthermore,

the BCRC is subject to Washington's OPMA because it qualifies as a public agency, or the functional equivalent of one, such that the OPMA applies to its conduct, including any business or action taken during the November 2014 meeting. Plaintiffs have alleged that the November 2014 meeting was not properly noticed and that the BCRC did not comply with its statutory obligation to make a finding its decision was appropriate. Those facts, if proven true, give rise to valid claims for declaratory relief and a writ of review. Thus, the trial court's order dismissing such claims should be reversed.

In addition to the above, plaintiffs properly alleged a claim for declaratory relief in the form of a declaration that C-TRAN, its individual directors, and executive officer, Jeff Hamm, violated the OPMA. Plaintiffs alleged conduct which, if proven true, demonstrated that C-TRAN and its directors knowingly took action in furtherance of a decision that was made in violation of the OPMA. Moreover, plaintiffs alleged that Mr. Hamm violated his statutory obligation to send out proper notice of the BCRC's November 2014 meeting. These allegations, if true, give rise to a valid claim for declaratory relief such that the trial court's grant of the Moving Defendants' Motion to Dismiss should be reversed.

VI. ARGUMENT

A. FIRST ASSIGNMENT OF ERROR:

THE TRIAL COURT ERRED IN GRANTING THE MOVING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' CLAIMS FOR DECLARATORY RELIEF

The trial court erred in granting the Moving Defendants' Motion to Dismiss plaintiffs' claims for declaratory relief. The Moving Defendants did not have standing to move to dismiss any claims against the BCRC or Mr. Mielke. Likewise, such claims were properly alleged as the BCRC is subject to the OPMA, and plaintiffs' complaint alleged facts which, if proven true, give rise to valid claims for declaratory relief.

1. The Moving Defendants did not have standing to dismiss plaintiffs' declaratory relief claims against the BCRC and Mr. Mielke

The doctrine of standing prohibits a party from asserting another's legal right. *West v. Thurston County*, 144 Wn.App. 573, 578, 183 P.3d 346 (2008). Standing is a question of law that this court reviews *de novo*. *Id.* For standing to exist, a claimant "must establish that injury has occurred to a legally protected right." *Pacific Marine Ins. Co. v. State ex. Rel. Dep't. of Rev.*, 181 Wn.App. 730, 739, 329 P.3d 101 (2014) quoting *Sprague v. Sysco Corp.*, 97 Wn.App. 169, 176 n. 2, 982 P.2d 1202 (1999). A party has standing to raise an issue only where he or she "has a distinct and personal interest in the outcome of the case." *Id.* quoting *Timberline*

Homeowners Ass'n, Inc. v. Brame, 79 Wn.App. 303, 307, 901 P.2d 1074 (1995) and *Erection Co. v. Dep't Labor & Indus.*, 65 Wn.App. 461, 467, 828 P.2d 657 (1992).

By their own admission, the Moving Defendants are separate and distinct from the BCRC. CP 40 (“the BCRC is separate from C-TRAN and its Board.”). Thus, the Moving Defendants could not assert the interests of the BCRC, including any interest the BCRC may have had in dismissing the claims against it in this matter. The same is true of Mr. Mielke, who was independently represented throughout this action and did not join in the Moving Defendants’ motion.

The Moving Defendants did not have standing to assert any arguments or defenses on behalf of the BCRC or Mr. Mielke, and certainly not authority to move to dismiss plaintiffs’ claims against these parties. Nonetheless, the Moving Defendants so moved and the trial court granted their request. As the Moving Defendants did not have standing to move for the dismissal of plaintiffs’ claims against the BCRC and Mr. Mielke, this Court should reverse the trial court’s Order dismissing such claims against the BCRC and Mr. Mielke.

2. The BCRC is subject to Washington’s OPMA

The OPMA was enacted as part of a nationwide effort to make government affairs more accessible and transparent. Laws of 1971, ch.

250. Washington's OPMA is found under RCW 42.30 *et seq.* Pursuant to RCW 42.30.030, meetings of a governing body of a public agency must be open to the public. RCW 42.30.030. A "governing body" is defined as a "multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment." RCW 42.30.020(2).

Here, there is no dispute that the members of the BCRC qualify as a governing body because they are a "multi-member board" made up of elected officials and representatives. Rather, the question on appeal is whether the BCRC qualifies as a "public agency" as that term is defined under the OPMA. This issue is one of statutory interpretation.

Interpretation of a statute begins with the statute's text. If the plain language of the statute is unambiguous, courts "give effect to that language and that language alone because we presume the legislature says what it means and means what it says." *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). "Plain meaning is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 229 P.3d 791, 243 P.3d 1283 (2010) (internal quotation marks omitted). Consideration of related provisions includes consideration of other statutes

“which disclose legislative intent about the provision in question.” *Dep’t of Ecology v. Campbell & Gwynn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). A statutory interpretation which would render an unreasonable or illogical consequence should be avoided. *City of Puyallup v. Pacific Northwest Bell Telephone Co.*, 98 Wn.2d 443, 450, 656 P.2d 1035 (1982).

Here, the BCRC qualifies as a public agency both under the plain text of the OPMA’s definitional section, as well as under its overarching statutory scheme. First and foremost, the requirements of the OPMA are to be liberally construed. RCW 42.30.910. Indeed, it was the intent of the Legislature that the actions of all “public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof” be taken openly and that the deliberations of such groups be the same. RCW 42.30.010; *see also West v. State Wash. Ass’n of County Officials*, 162 Wn.App. 120, 131, 252 P.3d 406 (2011)(the purpose of the OPMA is to permit the public to observe the steps employed in order to reach a governmental decision, and the intended result is to ensure governmental accountability). Thus, when construing the definition of a “public agency” under the OPMA, this Court should adopt a liberal interpretation and construe the statute’s definition in the most liberal way possible to effectuate the goals of the OPMA, which is openness of governmental decisions and action.

The OPMA defines a “public agency” as:

(a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;

(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;

(c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;

(d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

RCW 42.30.020(1).

Here, the BCRC qualifies as a political subdivision, or alternatively, a state agency and/or subagency of C-TRAN, such that the OPMA applies.

i. The BCRC is a political subdivision

The BCRC qualifies as a political subdivision of the state of Washington and thereby a public agency subject to the OPMA. “Political subdivision” is not defined by OPMA, however, other statutes have defined the term to mean everything from a city, county or town, to a port district, municipal corporation, and quasi-municipal corporation. *See e.g.* RCW 14.12.010(5) (defining “political subdivision” in the context of airport zoning laws as “any county, city, town, port district or other municipal or quasi municipal corporation authorized by law to acquire, own or operate an airport.”); RCW 43.160.020(3)(political subdivision is “any port district, county, city, town, special purpose district, and any other municipal corporations or quasi-municipal corporations...”); RCW 72.72.020 (“political subdivision means counties, cities, towns”). BLACK’S LAW DICTIONARY likewise defines the term as “a division of the state that exists primarily to discharge some function of local government.” BLACK’S LAW DICTIONARY 1346 (10th Ed. 2014).

Based upon the above, a “political subdivision” can include both a quasi-municipal corporation and a division of the state which exists primarily to discharge some function of local government. The BCRC meets either of these definitions.

A “quasi municipal corporation” is:

a corporation created or authorized by the legislature which is merely a public agency

endowed with such of the attributes of a municipality as may be necessary in the performance of its limited objective. In other words, a quasi-municipal corporation is a public agency created or authorized by the legislature to aid the state in, or to take charge of, some public or state work, other than community government, for the general welfare. ‘Quasi-municipal’ corporations are public in nature, but not, strictly speaking, municipal corporations. They are bodies which possess a limited number of corporate powers and which are low down in the scale or grade of corporate existence, and consisting of various local government areas established to aid the administration of public functions...”

Whatcom County v. Taxpayers of Whatcom County Solid Waste Disposal Dist., 66 Wn.App. 284 n.10, 831 P.2d 1140 (1992) (quoting MCQUILLIN, MUNICIPAL CORPORATIONS § 2.13) (emphasis added); *see also* 1970 Op. Att’y General No. 58.¹ According to the Attorney General, “[t]he critical points to be noted in this definition of the term ‘quasi-municipal corporation’ are (1) that such a corporation must have been created by, pursuant to act of the legislature; (2) that it must derive its

¹ 1970 Op. Att’y General No. 58, available at <http://www.atg.wa.gov/ago-opinions/letter-opinion-1970-no-058>. Although not binding, a formal attorney general opinion is persuasive and “entitled to great weight.” *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 308, 268 P.3d 892 (2011)(internal quotation marks omitted).

powers from the legislature; and (3) that it exercises those powers on a local rather than a state-wide basis.” 1970 Op. Att’y General No. 58 (emphasis added).

Here, the BCRC is a statutorily created committee which has been delegated with reviewing and altering, where appropriate, the composition of the board of directors for C-TRAN, another public agency and municipal corporation. RCW 36.57A.055. The BCRC has limited function and powers, and which are derived entirely from its enacting statute-RCW 36.57A.055. The BCRC exercises its powers on a local basis in Clark County, Washington. Thus, the BCRC qualifies as a quasi-municipal corporation, and likewise a political subdivision of the state of Washington. RCW 42.30.020(1)(b). As a political subdivision, the BCRC falls within the scope of entities subject to the OPMA.

ii. Alternatively, the BCRC is a state agency

Alternatively, the BCRC qualifies as a “state agency” under the RCW 42.30.020(1)(a). This Court has found that “for the purposes of the OPMA, a state agency may be an association or organization which serves a statewide public function.” *West v. State of Washington*, 162 Wn.App. 120, 132, 252 P.3d 406 (2011). Although not specifically analyzed within the context of the OPMA, Washington appellate courts have also looked to a four-factor balancing test in determining whether a particular organization is the “functional equivalent” of a state agency. *See*

Worthington v. Westnet, 182 Wn.2d 500, 509, 341 P.3d 995 (2015); *West v. State of Washington*, 162 Wn.App. 120, 132, 252 P.3d 406, 412 (2011); *Telford v. Thurston County Bd. of Com'rs*, 95 Wn.App. 149, 163, 974 P.2d 886 (1999).

The four-factor balancing test addressed in *Worthington*, *West*, and *Thurston* was originally adopted by Washington's Attorney General in 1991 in response to a question over whether a particular organization was a "state agency" for purposes of applying the OPMA. According to the Attorney General, an entity will be considered the functional equivalent of a state agency based upon whether: (1) the entity performs a governmental function; (2) the level of government funding involved in the entity's actions; (3) the extent of governmental involvement or regulation in the entity's actions; and (4) whether the entity was created by the government. 1991 Op. Att'y Gen. No. 5, at 4.²

In this case, plaintiffs alleged and indeed provided evidence that the BCRC qualifies as the functional equivalent of a state agency. The BCRC performs the governmental function of periodically reviewing and altering (where appropriate) the make-up of C-TRAN's board of directors.

² |1991 Op. Att'y Gen. No. 5, at 4, available at <http://www.atg.wa.gov/ago-opinions/public-records-open-public-meetings-act-corporations-small-business-export-finance>

RCW 36.57A.055. Public funds and staff are all utilized to support the actions of the BCRC, including C-TRAN's own staff funds and resources. C-TRAN publishes notice of the BCRC's meetings, coordinates and schedules a room for the meetings, and handles publication of the BCRC's meeting notices. Furthermore and finally, the BCRC was created by the Legislature by virtue of the Legislature adopting and enacting RCW 36.57A.055. Thus, based upon the four-part test adopted by Washington's Attorney General, the BCRC qualifies as a state agency.³

iii. Alternatively, the BCRC is a Subagency of C-TRAN

Alternatively, even if this Court finds that the BCRC does not qualify as either a political subdivision or a state agency, the BCRC may be considered a subagency of C-TRAN. C-TRAN's staff and funds are used to help coordinate the committee's meetings and facilitate its

³ The BCRC may also expressly qualify as a state agency, not just the functional equivalent of one, given its role and function. In *West v. State of Washington*, 162 Wn.App. 120, 132, 252 P.3d 406, 412 (2011), this Court analyzed what type of entities may qualify as a "state agency" under RCW 42.30.020(a). According to this Court, a "state agency" is an association and/or organization "which serves a statewide public function." Here, the BCRC periodically reviews the composition of the board of directors of a municipal corporation/public body, C-TRAN. In that regard it serves a public function, which it is authorized to do by state statute. Thus, the BCRC is also likely a state agency in its own right.

business. Some members of the committee are also directors of C-TRAN. The fact that the committee is not beholden to the directors of C-TRAN does not matter for purposes of applying the “subagency” designation. The important factor is how the BCRC operates, which arguably is as a subagency to C-TRAN itself.

3. Plaintiffs properly alleged a claim for a declaration that the BCRC violated Washington’s OPMA

Pursuant to RCW 7.24.020, “A person...whose rights, status or other legal relations are affected by a statute... may have determined any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status or other legal relations thereunder.” A proceeding commenced under Washington’s Uniform Declaratory Judgments Act is subject to the same rules of pleading as any other civil action. *Frach v. Schoettler*, 46 Wn.2d 281, 291, 280 P.2d 1038 (1955).

Here, plaintiffs alleged a claim for declaratory relief against the BCRC arising out of its alleged failure to comply with the special meeting notice requirements of the OPMA, as well as in failing to make a specific finding their decision to change the make-up of the C-TRAN board of directors was appropriate as required by RCW 36.57A.055. CP 8-9. These claims were properly pled. Plaintiffs alleged that they are citizens of Washington State and that they have the right to enforcement of the

OPMA and other statutes such as RCW 36.57A.055. CP 3; (APP 28, 33). Assuming plaintiffs proved the BCRC violated the OPMA and its obligations under RCW 36.57A.055, plaintiffs would be entitled to a declaratory judgment in their favor under RCW 7.24.020. Thus, plaintiffs' claims were properly alleged and this Court should reverse the trial court's grant of the Moving Defendants' Motion to Dismiss.

4. Plaintiffs properly alleged a claim for declaratory relief against C-TRAN and its directors for violation of the OPMA in knowingly taking action in furtherance of an ongoing violation of the OPMA

Plaintiffs likewise properly alleged a claim against C-TRAN and its individual directors for violation of the OPMA. RCW 42.30.120 states in relevant part:

Each member of a governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him or her, with knowledge of the fact the meeting is in violation thereof, shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars.

RCW 42.30.120(1).

Here, plaintiffs alleged that C-TRAN and its individual directors violated the OPMA by virtue of taking action in their January 2015

meeting, knowing that the C-TRAN board may not be validly comprised. CP 7; (APP 32-34). In other words, C-TRAN's directors ignored warnings that they were not a properly constituted board given the BCRC's failure to comply with the OPMA in its November 2014 meeting. Plaintiffs also asked for a declaration that the ongoing decisions of the C-TRAN board are null and void given that the BCRC had failed to comply with the OPMA. CP 9; (APP 34). Both allegations, if proven true, would give rise to a claim for declaratory relief under Washington's Uniform Declaratory Judgments Act.

If an action taken in violation of the OPMA is void, it may only be implemented if ratified by the local government taking the same action in an open meeting, in compliance with the OPMA. *Future Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1091 (2003); citing *Henry v. Oakville*, 30 Wn.App. 240, 246, 633 P.2d 892 (1981) ("The well-established rule is that where a governing body takes an otherwise proper action later invalidated for procedural reasons only, that body may retrace its steps and remedy the defect by re-enactment with the proper formalities."). When an initial act violates the OPMA, unless the local government ratifies the initial action by "retracing its steps," subsequent actions implementing the initial action are likewise inconsistent and thereby void as well, even if taken in an open meeting. *Id.*

Here, although the January 2015 meeting of the C-TRAN directors may have been held in compliance with the OPMA, plaintiffs have alleged the November 2014 meeting of the BCRC was not. The newly reconstituted board was thereby continuing to implement an action that was inconsistent with the OPMA and thereby void as a matter of law. Plaintiffs alleged, and in fact demonstrated through evidence in the record, that C-TRAN directors were aware that the BCRC meeting was held in violation of the OPMA. CP 245-246; (APP 11-12). These allegations and evidence, if true, would result in a violation of the OPMA as demonstrated in *Future Realty*. Thus, plaintiffs properly alleged a claim for declaratory relief against C-TRAN and its individual directors under Washington's OPMA. The trial court's decision to dismiss such claim should therefore be reversed.

5. Plaintiffs properly alleged a claim for declaratory relief against Mr. Jeff Hamm in failing to provide proper notice of the November 2014 BCRC meeting in accordance with Washington's OPMA and RCW 36.57A.055

Plaintiffs' claim for declaratory relief against Mr. Jeff Hamm was likewise properly alleged. RCW 36.57A.055 provides that Mr. Hamm as the chief administrative officer of C-TRAN must provide notice twenty days prior to any meeting of the BCRC. Plaintiffs requested a declaratory judgment that Mr. Hamm violated this obligation because the meeting

notice provided by his office failed to comply with the special meeting notice requirements of the OPMA. CP 9; (APP 34). Ultimately, the trial court did not reach the issue of whether the notice provided by Mr. Hamm was sufficient to comply with his obligations under RCW 36.57A.055 and/or the OPMA. Instead, the court held the BCRC was not subject to the OPMA, thus making Mr. Hamm's obligations with respect to notice under the OPMA irrelevant. To the extent this court reverses the trial court's decision as to application of the OPMA to the BCRC, Plaintiffs' claim against Mr. Hamm must likewise be remanded for further review. Specifically, on remand the trial court must decide whether Mr. Hamm's notice of the BCRC's November 2014 meeting complied with the OPMA and RCW 36.57A.055

B. SECOND ASSIGNMENT OF ERROR:

**THE TRIAL COURT ERRED IN DISMISSING
PLAINTIFFS' CLAIM FOR A STATUTORY WRIT OF
REVIEW**

The trial court also erred in dismissing plaintiffs' claim for statutory writ of review. Firstly, the Moving Defendants did not have standing to move to dismiss the claim. Secondly, the claim was properly pleaded as set forth below.

- 1. The Moving Defendants did not have standing to move to dismiss plaintiffs' claim for a statutory writ of review**

As with plaintiffs' claim for declaratory relief, the Moving Defendants did not have standing to move to dismiss plaintiffs' claim for a statutory writ of review against the BCRC. *See argument supra* VI(A)(1). The Moving Defendants were not injured and did not have any interest in the outcome. Both writ of review claims were alleged solely against the BCRC. By their own admission, the Moving Defendants are independent of the BCRC. Thus, the Moving Defendants were without standing to move to dismiss plaintiffs' statutory writ claim. Accordingly, this Court should reverse the trial court's decision to grant dismissal of such on appeal.

2. Plaintiffs properly alleged a claim for a statutory writ of review against the BCRC

RCW 7.16.040 provides for a statutory or constitutional writ of review to, among other things, "correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law." This Court has held that "the absence of a right of appeal or plain, speedy, and adequate remedy at law is an essential element of the superior court's jurisdiction to grant a statutory writ of review." *Coballes v. Spokane County*, 167 Wn.App. 857, 867, 274 P.3d 1102 (2012).

Here, plaintiffs properly pled a claim for a statutory writ of review

against the BCRC. The BCRC was allowed to change the composition of the C-TRAN board only if such change was appropriate. RCW 36.57A.055. Plaintiffs alleged that the BCRC failed to make a finding their decision was appropriate. CP 8-9. There was no speedy or otherwise adequate remedy available to plaintiffs to correct this error of law given that C-TRAN's directors reacted to allegations the BCRC violated the OPMA. If proven true, these facts and allegations would give rise to a violation of the law and thereby a right by plaintiffs to seek a writ of review. In that regard, plaintiffs properly pled their claim for statutory writ of review and it was reversible error for the trial court to dismiss the claim.

C. THIRD ASSIGNMENT OF ERROR:

**THE TRIAL COURT ERRED IN DISMISSING
PLAINTIFFS' ALTERNATIVE CLAIM FOR A
CONSTITUTIONAL WRIT OF REVIEW**

The trial court also erred in dismissing plaintiffs' claim for a constitutional writ of review against the BCRC. The Moving Defendants did not have standing to move to dismiss this claim, and furthermore, the claim was properly pled.

- 1. The Moving Defendants did not have standing to dismiss plaintiffs' claim for a constitutional writ of review**

Similar to both its declaratory relief and statutory writ of review claims, the Moving Defendants did not have standing to move to dismiss or otherwise argue for dismissal of plaintiffs' claim of constitutional writ of review of the BCRC's conduct as it relates to the OPMA. *See arguments supra*, VI(A)(1) and VI(B)(1). For the same reasons as stated above, this Court should reverse the trial court's dismissal of plaintiffs' claim for a constitutional writ of review against the BCRC.

2. Plaintiffs properly alleged a claim for a constitutional writ of review against the BCRC

Notwithstanding the lack of standing argument, plaintiffs also properly alleged a claim for a constitutional writ of review of the BCRC's conduct as it relates to the OPMA. As noted above, RCW 7.16.040 provides grounds for seeking a constitutional writ of review. In order to invoke a constitutional review of any agency's actions, a claimant must allege that an agency acted illegally or engaged in arbitrary and capricious actions which violate the claimant's fundamental rights. *King County v. Washington State Bd. of Tax Appeals*, 28 Wn.App. 230, 237, 622 P.2d 898 (1981).

Here, plaintiffs alleged that the BCRC violated its obligations under RCW 36.57A.055 in failing to demonstrate how or why their decision to change to the make-up of C-TRAN's board of directors. CP

9. If proven true, these allegations demonstrate that the BCRC acted illegally and contrary to its obligations under Washington law. Plaintiffs have no speedy or otherwise adequate right of recovery against the BCRC's actions. In that regard, plaintiffs adequately alleged a claim for a constitutional writ of review against the BCRC. It was reversible error for the trial court to find otherwise.

VII. CONCLUSION

Based upon the above, Appellants request an Order reversing the trial court's grant of the Moving Defendants' Motion to Dismiss and that this case be remanded back for further proceedings on the merits.

DATED: February 5, 2016.

Respectfully submitted,

BALL JANIK, LLP

/s/ Adele J. Ridenour

Damien R. Hall, WSBA #47688

Adele J. Ridenour, WSBA #35939

Attorneys for Appellants

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on February 5, 2016 I filed the foregoing *APPELLANTS'*

OPENING BRIEF by mailing a copy to:

Washington Appellate Court Clerk
Court of Appeals Division II
950 Broadway
Ste 300, MS TB-06
Tacoma, WA 98402-4454

I further certify that on February 5, 2016, I served a copy of the foregoing

APPELLANTS' OPENING BRIEF by e-service, per agreement of the

parties, to the following party:

Thomas H. Wolfendale
thomas.wolfendale@klgates.com
Aaron E. Millstein
aaron.millstein@klgates.com
Robert B. Mitchell
Rob.mitchell@klgates.com
K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104

Chris Horne
chris.horne@clark.wa.gov
Chief Civil Deputy Prosecuting
Attorney for Clark County
PO Box 5000
Vancouver, WA 98666-5000

*Attorneys for Defendant Tom
Mielke*

Attorneys for Defendant C-TRAN

Donald L. English
english@elmbstv.com
Scott E. Russon
russon@elmbstv.com
English & Marshall, PLLC
12204 S.E. Mill Plain Blvd., Ste. 200
Vancouver, WA 98684

David Madore
17401 NE Stoney Meadows
Drive
Vancouver, WA 98682-5614

By US Mail only

*Attorneys for Defendant Connie Jo
Freeman*

DATED: February 5, 2016

BALL JANIK, LLP

/s/ Adele J. Ridenour
Damien R. Hall, WSBA #47688
Adele J. Ridenour, WSBA #35939
Attorneys for Appellants

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Marla Young

From: Debbie Jermann <DebbieJ@c-tran.org>
Sent: Wednesday, January 29, 2014 10:53 AM
To: 'Marla Young'
Subject: RE: November 2014 meeting?

Staff is recommending we move to November 18 - I'm just about 99% sure that the Board will accept staff's recommendation.

From: Marla Young [<mailto:myoung@fvrl.org>]
Sent: Wednesday, January 29, 2014 10:47 AM
To: Debbie Jermann
Subject: RE: November 2014 meeting?

Do you think they might move it to November 18? I have someone else interested in using the room on that evening but I haven't approved it yet

Marla Young
Vancouver Community Library
901 C Street
Vancouver, WA 98660
360.906.5112
myoung@fvrl.org

From: Debbie Jermann [<mailto:DebbieJ@c-tran.org>]
Sent: Wednesday, January 29, 2014 9:47 AM
To: 'Marla Young'
Cc: Jeff Hamm
Subject: RE: November 2014 meeting?

They didn't, only addressed the March meeting date. I will have on the calendar for our meeting in February.

From: Marla Young [<mailto:myoung@fvrl.org>]
Sent: Wednesday, January 29, 2014 9:44 AM
To: Debbie Jermann
Cc: Jeff Hamm
Subject: RE: November 2014 meeting?

Hi Debbie:

What did the Board decide about the November meeting?

Marla Young
Vancouver Community Library
901 C Street
Vancouver, WA 98660
360.906.5112
myoung@fvrl.org

From: Debbie Jermann [<mailto:DebbieJ@c-tran.org>]
Sent: Monday, January 13, 2014 3:14 PM
To: 'Marla Young'
Cc: Jeff Hamm
Subject: RE: November 2014 meeting?

Wow - you are right. Did not even notice. We are asking the Board to also change the March meeting date so I'll have them discuss November also. Thanks for the heads up!

From: Marla Young [<mailto:myoung@fvrl.org>]
Sent: Monday, January 13, 2014 3:12 PM
To: Debbie Jermann
Subject: November 2014 meeting?

Hi Debbie:

The Library is closed on November 11th for Veterans Day and that would be the day of your board meeting. Did you want to book a different day?

Marla Young
Vancouver Community Library
901 C Street
Vancouver, WA 98660
360.906.5112
myoung@fvrl.org

Marla Young

From: Debbie Jermann <DebbieJ@c-tran.org>
Sent: Wednesday, October 29, 2014 8:25 AM
To: Marla Young
Subject: November 18 C-TRAN Meeting

Marla - we will need use of the conference telephone for our November 18 meeting. Thanks!



Debbie Jermann, MMC
Executive Assistant/Clerk of the Board
C-TRAN
2425 NE 65th Avenue
Vancouver, WA 98661
(360) 906-7303
debbiej@c-tran.org

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Marla Young

From: Debbie Jermann <DebbieJ@c-tran.org>
Sent: Tuesday, September 16, 2014 9:07 AM
To: 'Marla Young'
Subject: November 18, 2014

We believe we may reconvene the C-TRAN Board Composition Review Committee prior to the November 18 meeting. I believe we have the room at 2:00 p.m. that day - is that correct?



*Debbie Jermann, MMC
Executive Assistant/Clerk of the Board
C-TRAN
2425 NE 65th Avenue
Vancouver, WA 98667
(360) 906-7303
debbiej@c-tran.org*

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Print Calendar

http://intranet.fvrl.org/EventsCalendar/calendar_view_print.cfm?Men...

[print](#) [close x](#)

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Scheduler: Branch - VA

 = Recurring

Tuesday, November 18, 2014

 VA Laptop 01: ECC
9:00AM - 12:00PM

 Klickitat Room: ECC
9:00AM - 12:00PM

Skamania Room: AARP Tax Help & Staff meeting
2:00PM - 3:00PM

Columbia Room: C-Tran Board Meeting
4:30PM-9:30PM Debbie Jerman debbiej@c-tran.org 906-7303
2:30PM - 10:00PM

 Skamania Room: Advanced Spanish Conversation Circle
6:00PM - 8:00PM

DJ

October 8, 2014

Legal Ads
The Columbian
701 West 8th Street
Vancouver, WA 98660

Dear Legal Ads:

Enclosed please find copy a Public Notice we wish to appear in your publication on the designated date. When submitting your invoice, please provide two tear sheets.

Thank you in advance for your assistance.

Sincerely,

C-TRAN

Debbie Jermann, MMC
Executive Assistant/Clerk of the Board

Enclosure

c: Norma Willis, Manager of Accounting Services
Tami Bridge, Accounting Specialist
Ronda Peck, Marketing/Community Outreach Administrator



**C-TRAN BOARD OF DIRECTORS
MEETING MINUTES**

January 13, 2015

The C-TRAN Board of Directors meeting was held Tuesday, January 13, 2015 at Vancouver Community Library, Columbia Room, 901 C. Street, Vancouver, WA.

CALL TO ORDER

2014 Vice-Chair Jim Irish called the meeting to order at 5:31 p.m.

ROLL CALL OF MEMBERS

PRESENT: Greg Anderson - City of Camas, Jack Burkman - City of Vancouver, Bart Hansen - City of Vancouver, Jim Irish - Cities of La Center/Ridgefield and Town of Yacolt, Lyle Lamb - City of Battle Ground, David Madore - Clark County Council, Jennifer McDaniel - City of Washougal, Anne McEnerny-Ogle - City of Vancouver, John Shreves - Labor Representative, Jeanne Stewart - Clark County Council

ABSENT: None

STAFF PRESENT

Executive Director/CEO Jeff Hamm, Legal Counsel Tom Wolfendale, Legal Counsel Aaron Millstein, Legal Counsel Michael Ryan, Chief Financial Officer Diane O'Regan, Director of Planning & Development Scott Patterson, Director of Human Resources & Labor Relations Suzanne Pfeiffer, Director of Maintenance Celia Sherbeck, Operations Chief Debra Wright, Senior Manager of Information Technology Bob McMahan, Senior Passenger Service Manager/PIO Jim Quintana, Paratransit Services Manager Walt Gordon, Field Operations Manager Bob Medcraft, BRT Project Manager Chuck Green, Community Outreach Coordinator Katy Belokony, Executive Assistant/Clerk of the Board Debbie Jermann.

PLEDGE OF ALLEGIANCE

Vice-Chair Jim Irish led the Pledge of Allegiance.

COMMUNICATIONS

1. Election of the 2015 C-TRAN Board of Directors Chair and Vice-Chair

Vice-Chair Irish said the first order of business is to elect a Chair and Vice-Chair for 2015. Each Board Member has been provided a history of C-TRAN Chairs and Vice-Chairs by year. There has been a general rotation between Clark County, City of Vancouver, and the small cities, but not always. In 2014, Clark County Commissioner Steve Stuart served as Chair for three months, and Vancouver Mayor Tim Leavitt served out the balance of the year, or nine months. In selecting this year's Chair and Vice-Chair, the Board may want to consider whether last year's Chairs and Vice-Chair's tenures constitute a rotation.

Board Member David Madore stated he believes the question of Board composition needs to be clarified before elections are conducted, and submitted a letter signed by all three Clark County Councilors, attached to these minutes as Exhibit A.

Board Member Madore said Exhibit A asserts and memorializes a point of order; this meeting of the C-TRAN Board is in violation of the current C-TRAN Bylaws because it is being conducted by an improperly constituted governing board.

Board Member Madore said Clark County believes that C-TRAN violated the Open Public Meetings Act by failing to provide proper notice for the November 18, 2014 C-TRAN Board Composition Review Committee meeting. At that meeting, inappropriate action was taken to remove a seat on the C-TRAN Board from Clark County, resulting in an imbalance of power in downtown Vancouver, and reduced representation for the most rural citizens in Yacolt and other outlying areas.

Board Member Madore said Clark County believes the previous governing board of C-TRAN should continue to govern until a properly noticed process could be conducted.

Legal Counsel Tom Wolfendale said Vice-Chair Irish may defer to the Point of Order decision of the assembly; however, legal counsel is of the opinion that the Board is sitting properly at this time.

Board Member Madore submitted a letter from Pacifica Law Group (attached as Exhibit B), which represents the citizens of Clark County, asking that the C-TRAN Board Composition Review Committee be reconvened at a properly noticed meeting.

Legal Counsel Wolfendale noted the Board needs to take action on Board Member Madore's Point of Order.

Legal Counsel Wolfendale asked Board Member Madore to clarify if it is his intent that the previous Board Composition conduct this evening's meeting, or if the meeting should be cancelled.

Board Member Madore said the request is to have the previous Board Composition conduct the meeting.

Legal Counsel Wolfendale advised that the new Board composition took effect as soon as the C-TRAN Board Composition Review Committee took action.

Legal Counsel Wolfendale advised that the presiding officer could determine if the Point of Order is valid or the Presiding Officer could defer the question to the entire Board.

Board Member Madore asked that Clark County Chief Civil Deputy Prosecuting Attorney Chris Horne provide assistance to these proceedings.

Legal Counsel Wolfendale advised that Mr. Horne does not legally represent C-TRAN.

Board Member Madore said Mr. Horne does represent the Clark County Councilors.

Vice-Chair Irish stated he would like the current seated Board to take a vote on the Point of Order.

Legal Counsel Wolfendale advised the action requires a motion, second, debate and vote.

Board Member Jack Burkman asked how many of the Clark County Representatives are allowed to vote.

Legal Counsel Wolfendale said only two are seated.

Board Member Madore said he believes the best way to move forward is to have all of the votes tallied individually, so the Clark County Councilors are not making concessions, which is in the best interest of the citizens.

JACK BURKMAN MOTIONED AND ANNE McENERNY-OGLE SECONDED THAT THE NOVEMBER 18, 2014 DIRECTION OF THE C-TRAN BOARD COMPOSITION REVIEW COMMITTEE NOVEMBER 18, 2014 WILL BE FOLLOWED (2 SEATS CLARK COUNTY; 3 SEATS CITY OF VANCOUVER; 1 SEAT EACH BATTLE GROUND, CAMAS, AND WASHOUGAL; AND ONE SEAT SHARED BY LA CENTER, RIDGEFIELD & YACOLT); AND THAT THE POINT OF ORDER (AS ADDRESSED IN EXHIBIT A) IS NOT WELL TAKEN.

Board Member Lyle Lamb asked Legal Counsel to speak to the violations outlined in the letters submitted by Clark County (Exhibit A) and Pacifica Law Group (Exhibit B).

Legal Counsel Wolfendale advised there is a scheduled Executive Session on tonight's agenda to address the legal threat to C-TRAN. Legal Counsel will recommend that a change in order of the agenda be approved so that Executive Session can be conducted prior to citizen comment.

Board Member Stewart said her only interest in this action is to ask that the Board Composition Review Committee be reconvened, and properly noticed. The Mayors of the cities were notified of the date, time, and place; however, the letter was not sent to Clark County Commissioners, which tells her it was by intent to not give County Commissioners notice of that meeting. Board Member Jeanne Stewart stated she feels that the November 18, 2014 C-TRAN Board Composition Review Committee was not properly noticed, and the Clark County elected officials were intentionally not provided notice of that meeting, and does not feel anyone should benefit from those errors.

Executive Director/CEO Jeff Hamm said the letters were sent to the Mayors asking for confirmation of their representative to the Board Composition Review Committee since the committee had not met for a year.

Board Member Madore said the Open Public Meeting Act (OPMA) is intended to provide notice of meetings, not necessary just to the public officials, but to protect and provide for the citizens. The Battle Ground Reflector newspaper did not receive notice until after the November 18 meeting, and the notice provided in the Columbian did not state the purpose of the meeting. In the spirit of goodwill and to show we serve the public well, Board Member Madore said the meeting should be noticed and reconvened.

LYLE LAMB MOVED TO TABLE THE MOTION UNTIL AFTER THE EXECUTIVE SESSION. THE MOTION DIED FOR LACK OF A SECOND.

Board Member Burkman stated C-TRAN Legal Counsel has stated the meeting was properly noticed and an article in The Columbian said the meeting was properly noticed, therefore, he does not believe the Point of Order is not well taken.

Board Member Madore asked the record to show all votes and remarks made by Clark County Councilor Tom Mielke.

Legal Counsel Wolfendale said the Clark County Councilors only have two seats on the Board; therefore, Councilor Mielke's name would not be called during a roll call vote.

Board Member Madore asked if anything is contributed by the third member of the Clark County Council that be documented, which is accomplished by the audio/video recording by CVTV.

Board Member Burkman reminded the Board that a yes vote would result in the Board being seated as approved by the C-TRAN Board Composition Review Committee and the meeting continuing.

THE MOTION CARRIED WITH DAVID MADORE AND JEANNE STEWART VOTING NAY.

COMMUNICATIONS

1. Election of the 2015 C-TRAN Board of Directors Chair and Vice-Chair

ANNE McENERNY-OGLE MOVED TO NOMINATE JIM IRISH AS CHAIR; JACK BURKMAN SECONDED THE NOMINATION.

JACK BURKMAN MOVED TO CLOSE THE NOMINATIONS; ANNE McENERNY-OGLE SECONDED THE MOTION; MOTIONED PASSED UNANIMOUSLY.

Board Member Madore asked if the cities of La Center, Ridgefield, and Town of Yacolt have reached an agreement for representation on the Board.

Executive Director/CEO Hamm said the Mayors and Legal Counsels for the jurisdictions met on Friday, January 9 and an agreement is being drafted on representation.

Board Member Madore asked if the Town of Yacolt has signed that agreement.

Executive Director/CEO Hamm said there was an agreement at the meeting but has no additional knowledge.

Board Member Madore said he spoke with Mayor Carothers and was told the Town of Yacolt was not willing to sign the agreement and urged caution in proceeding without that agreement in place.

Board Member McEnery-Ogle asked if it is appropriate to ask the Clark County Councilor Mielke to excuse himself from the table.

Legal Counsel Wolfendale said Councilor Mielke cannot participate in the meeting, but it is at the Board's discretion whether he remains seated at the table.

THE MOTION TO ELECT JIM IRISH AS THE 2015 CHAIR WITH LYLE LAMB VOTING NAY AND DAVID MADORE ABSTAINING.

JACK BURKMAN MOVED TO NOMINATE ANNE McENERNY-OGLE AS 2015 VICE-CHAIR; BART HANSEN SECONDED THE NOMINATION.

DAVID MADORE NOMINATED JEANNE STEWART AS VICE-CHAIR; LYLE LAMB SECONDED THE NOMINATION.

JACK BURKMAN MOTIONED, BART HANSEN SECONDED, AND MOTION CARRIED TO CLOSE THE NOMINATIONS.

Board Member Burkman stated he had nominated Board Member McEnery-Ogle because he felt the Board needed a leader to move the organization forward. There is not a clear pattern of rotation for the leadership seat, and he has concerns the Clark County representatives have consistently voted against public transit, including Bus Rapid Transit (BRT). Board Member Burkman also voiced concern that Clark County has publicly stated they have intent to sue C-TRAN; therefore, does not feel this is an appropriate time to put a Clark County representative in a leadership role.

Board Member Madore said the Clark County representatives are only guilty of standing up for the citizens, and they are separated by their faithfulness to represent the people. Board Member Madore said he is only bound to represent the people, was not elected to overrule the will of the people; and not elected to advance any project the people have voted to oppose. Board Member Madore said the people have voted against the same projects that C-TRAN continues to move forward.

Board Member Madore said Board Member Jeanne Stewart has a long track record as a City of Vancouver Councilor and previous member of the C-TRAN Board.

Board Member Stewart said she is disappointed that Board Member Burkman uses the nomination platform to belittle a nominee rather than speak to the attributes of Board Member McEnerny-Ogle.

Board Member Stewart said she has an excellent record as a previous C-TRAN Board Member, was a responsible Board Member, and cooperated with others on subcommittee work.

THE MOTION TO ELECT ANNE McENERNY-OGLE AS 2015 VICE-CHAIR CARRIED WITH LYLE LAMB, DAVID MADORE, JENNIFER McDANIEL, AND JEANNE STEWART VOTING NAY.

THE MOTION TO ELECT JEANNE STEWART AS 2015 VICE-CHAIR FAILED WITH GREG ANDERSON, JACK BURKMAN, BART HANSEN, JIM IRISH, AND ANNE McENERNY-OGLE VOTING NAY.

APPROVAL OF AGENDA

Legal Counsel Tom Wolfendale suggested that the approval of the Code of Ethics (Board Communications Item No. 1) be moved forward, followed by an Executive Session (Executive Session Item No. 2 - Open Public Meetings Act Litigation).

JACK BURKMAN MOTIONED, ANNE McENERNY-OGLE SECONDED, AND MOTION CARRIED TO MOVE BOARD COMMUNICATIONS ITEM NO. 1 - CODE OF ETHICS APPROVAL, AND EXECUTIVE SESSION (LITIGATION - OPEN PUBLIC MEETING ACT) PURSUANT TO RCW 42.30.110(1)(i).

DAVID MADORE MOTIONED, JEANNE STEWART SECONDED, AND MOTION CARRIED TO MOVE ACTION ITEM NO. 1 - PROPOSED BYLAW AMENDMENTS PURSUANT TO C-TRAN BOARD COMPOSITION REVIEW COMMITTEE DECISION AND CLARK COUNTY SUPERIOR COURT DECISION NO. 13-2-04050-0 FILED SEPTEMBER 30, 2014, STAFF REPORT NO. 15-005, IMMEDIATELY FOLLOWING CITIZEN COMMENT.

COMMUNICATIONS

From the Board

1. C-TRAN CODE OF ETHICS POLICY ANNUAL REAFFIRMATION, STAFF REPORT #15-008

The Code of Ethics policy was originally adopted January 12, 1999. At the original adoption, staff was directed to bring the policies to the Board annually for approval. The current C-TRAN Code of Ethics Policy was revised and adopted March 19, 2013, by the C-TRAN Board of Directors. The purpose of this Code is to establish standards of ethical conduct applicable to C-TRAN Board Members in the discharge of their duties by prescribing essential restrictions against conflict of interest and other conduct not consistent with good ethical practices while not creating unnecessary barriers to public service. To that end, Board Members should not be denied the opportunity available to all other citizens to acquire and maintain private economic interests, except in circumstances in which a conflict of interest would reasonably result.

The Code provides that all Board Members comply with the law and all other applicable rules and regulations governing the conduct of public officials. The standards in this Code shall not preclude other more stringent standards required by law.

Legal Counsel Wolfendale advised that each Board Member is required to look at their own circumstances, and determine if they are able to attend the Executive Session regarding the Open Public Meetings Act.

Board Member Stewart questioned if she could sign the Code of Ethics and protect the responsibility she fills in her role as County Councilor.

Legal Counsel Wolfendale said one provision of the Code of Ethics requires any Board Member to maintain confidentiality of Attorney/Client privilege. If Board Member Stewart signs the C-TRAN Code of Ethics, she must determine if there is anything that would prevent her from maintaining the attorney/client privilege in her other role. If the Board Members hear legal advice from the C-TRAN Legal Counsel and they feel compelled to divulge that information to Pacifica Law Group or the Clark County Counsel, then it would be appropriate to recues yourself from the C-TRAN Executive Session.

Board member Stewart asked for a recess to allow time to speak to the Clark County Counsel.

Chair Irish recessed the meeting at 6:50 p.m.

Chair Irish reconvened the meeting at 6:57 p.m.

THE BOARD MEMBERS UNANIMOUSLY SIGNED THE CODE OF ETHICS.

Legal Counsel Michael Ryan stated on December 3, 2014, the Clark County Council voted unanimously to approve a motion to authorize the Clark County Prosecuting Attorney's Office and/or with the help of outside counsel to seek an injunction before January 12 to prevent the C-TRAN bylaws from being changed regarding the C-TRAN Governing Board composition and to seek declaratory relief in response to noncompliance with public meeting notice requirements for the November 18 Composition Review Committee meeting.

Legal Counsel Ryan added that C-TRAN received a Public Records Request from Pacifica Law Group for records relating to the Board Composition Review Committee.

Legal Counsel Ryan stated the Executive Session will be held to discuss matters with Legal Counsel, and the attorney/client privilege belongs to C-TRAN and only C-TRAN can waive that privilege. No one who attends the Executive Session is allowed to breach that confidentiality.

Board Member Madore stated he would like to disclose that his allegiance is not to C-TRAN, nor to Clark County, but to the people of Clark County.

Board Member Stewart said when the Board comes out of Executive Session and if a motion is made to take action, if she does not attend the Executive Session, is she allowed to vote on the motion in open session.

Legal Counsel Ryan said yes, she would be allowed to vote in open session.

Board Member Stewart stated she would recuse herself from attending the Executive Session.

Board Member Jennifer McDaniel asked if Board Member Madore has a conflict of interest.

Board Member Madore said his allegiance to the citizens supersedes his allegiance to C-TRAN and Clark County.

Board Member McDaniel said usually if there is a conflict, it is up to the governing body to decide if that person can participate.

Legal Counsel Ryan said the Board can discuss whether they believe Board Member Madore has a conflict of interest

Board Member Burkman asked if it is a conflict if the Board Member acts on the knowledge they gained in the Executive Session.

Legal Counsel Ryan said it could be difficult to determine where the knowledge was gained.

Board Member Burkman asked what standard the Board has to meet to exclude someone on an appearance of impropriety.

Legal Counsel Ryan said it is on a case-by-case basis. A Board Member should not be able to use information obtained in an Executive Session to choose to bring legal action against the agency.

Board Member Madore asked for a recess to confer with Clark County Legal Counsel.

Chair Irish called a recess at 7:14 p.m.

Chair Irish reconvened the meeting at 7:20 p.m.

Board Member Madore stated Clark County has made their objection known and has submitted documents into the record (Exhibits A & B). Board Member Madore said he would recuse himself from the Executive Session as he could gain information that he would use to make informed decisions for Clark County.

Board Member Madore asked that the record reflect his objection that Clark County Councilor Tom Mielke is not allowed to vote.

At 7:23 p.m., Chair Irish advised that the C-TRAN Board would moved into an Executive Session pursuant to RCW 42.30.110.(1)(i) Litigation - Open Public Meeting Act for approximately 30 minutes.

At 7:53 p.m., the public was advised the Executive Session would continue for an additional 15 minutes.

At 8:08 p.m., the public was advised the Executive Session would continue for an additional 5 minutes.

The Executive Session adjourned at 8:11 p.m. with no action taken.

Chair Irish reconvened the regular Board Meeting at 8:13 p.m.

CITIZEN COMMUNICATIONS

CAROLYN CRAIN, Vancouver, WA thanked Clark County Councilor Tom Mielke and Washougal Councilmember Connie Jo Freeman for their years of service on the C-TRAN Board. Ms. Crain said C-TRAN frequently works against the will of the citizens, who fund the agency with tax dollars. Ms. Crain questioned the posting of notice of the November 18, 2014 C-TRAN Board Composition Review Committee and the legality of the noticing for the meeting. Ms. Crain said she believes Clark County deserves three seats on the C-TRAN Board and urged the Board not to approve the proposed Bylaw amendments.

MARGARET TWEET, Camas, WA submitted written testimony, attached to these minutes as Exhibit C, Exhibit D, and Exhibit E. Ms. Tweet said the C-TRAN Board ignored the voters when they approved both light rail and BRT.

IOSEPHINE WENTZEL, Vancouver, WA said that she wished to be on the record that she is not happy with the decision to reduce the number of seats on the C-TRAN Board for Clark County to two, and questioned how a city that represents fewer than 200,000 people should have more seats on the Board than Clark County. Ms. Wentzel said some elected officials are letting the citizens down with the infighting, and urged the elected officials to work together.

MARK ENGLEMAN, Vancouver, WA said he is a 20-year resident, engineer, and fought against the Columbia River Crossing (CRC) project, and urged everyone to work to resolve issues.

VICKI KRAFT, Vancouver, WA said she is a Clark County resident, concerned with the C-TRAN Board ignoring the voice of Clark County citizens. In November 2014, action took place to change the composition of the C-TRAN Board without providing proper notice, particularly to the Reflector Newspaper. An agreement with TriMet was approved to bring light rail to Clark County and this was done behind closed doors. Ms. Kraft thanked those C-TRAN Board Members who work for the citizens. Ms. Kraft urged the Board to not take action on the proposed Bylaw amendments and schedule another meeting of the C-TRAN Board Composition Review Committee.

THOMAS HANN, Vancouver, WA said the majority of C-TRAN Board Members vote against the citizens and ignore the vote of the people. Mr. Hann urged the Board to stop advancing an agenda that the people do not support, and urged the Board to refer projects that have economic impact to the voters to approve those projects.

JIM KARLOCK, Portland, OR said the C-TRAN Board must obey state law regarding open public meetings. Mr. Karlock asked the Board Members where their allegiance lies, and asked Board Member Burkman if he accepted the legal limit of election contributions from the people that will benefit from BRT. Mr. Karlock asked if Board Member Burkman should recuse himself from BRT votes.

CAROL LEVANENI said she represents Clark County Citizens United, Inc., comprised of 6,000 members. Ms. Levanenij said she previously was a member of the C-TRAN Citizens Advisory Committee (CCAC) but quit because it was obvious there was too much bias towards light rail and not enough emphasis on a good bus system. The voters have clearly told C-TRAN they are not happy with what has been happening, the buses in rural areas do not meet the need, and urged the Board to give Clark County back the seat that was taken from them.

SUSAN RASMUSSEN said she is the President of Clark County Citizens United, Inc., whose membership includes hard working farmers and ranchers in rural areas. Ms. Rasmussen said she does not recognize any of the Board Members as rural citizens, and said that rural Clark County needs representation on the Board to avoid taxation without representation. Ms. Rasmussen said the demeanor of some Board Members is disrespectful and urged the Board to address that issue.

TAYLOR CURRY, Vancouver, WA said he believes the residents in the C-TRAN service area deserve good governance and urged C-TRAN to seek a declaratory judgment or Washington State Attorney General opinion on the Board composition.

CHRIS GILSON, Vancouver, WA said he is pleased by the action of the C-TRAN Board Composition Review Committee, providing opportunities for representation to the smaller cities. Mr. Gilson said he is surprised that the Clark County Councilors have issue with the reduction in seats, as they were the ones who volunteered to give up the seat. Mr. Gilson suggested that additional seats on the Board could be pursued through legislation.

ACTION ITEMS

1. PROPOSED C-TRAN BYLAW AMENDMENTS PURSUANT TO C-TRAN BOARD COMPOSITION REVIEW COMMITTEE DECISION AND CLARK COUNTY SUPERIOR COURT DECISION NO. 13-2-04050-0 FILED SEPTEMBER 30, 2014, STAFF REPORT #15-005

The C-TRAN Board Composition Review Committee last met on November 18, 2014 and considered five options for Board Composition. The committee adopted the following composition:

- Clark County - 2 Representatives
- City of Vancouver - 3 Representatives
- City of Battle Ground - 1 Representative
- City of Camas - 1 Representative
- City of Washougal - 1 Representative
- City of Ridgefield, City of La Center & Town of Yacolt - 1 Shared Representative

In addition, on September 30, 2014, the Superior Court ruled that should the Board composition change to anything less than three for City of Vancouver or Clark County, the entire Block Veto Bylaw 4.5.1. is rendered invalid at that time. The proposed revision to the Bylaws reflects both the action of the C-TRAN Board Composition Review Committee and the Clark County Superior Court ruling.

JACK BURKMAN MOTIONED AND GREG ANDERSON SECONDED TO APPROVE THE REVISED BYLAWS.

Board Member Madore reiterated his belief that this action is inappropriate and that the Board Composition Review Committee should be reconvened and that the previous Board Composition should be considering this action. All three County Councilors should be seated and vote on this action.

Board Member Burkman asked Legal Counsel to address the suggestion that the C-TRAN Board of Directors change the proposed composition.

Legal Counsel Ryan responded that the C-TRAN Board of Directors does not have the authority to change the action of the C-TRAN Board Composition Review Committee action.

Board Member Madore asked if the C-TRAN Board has the legal right to recognize the error and reconvene the Board Composition Review Committee that is properly noticed.

Legal Counsel Ryan said the Board Composition Review Committee is set by statute and is unsure of what Board Member Madore's question.

Board Member Madore said when other governing bodies discover an Open Public Meetings Action (OPMA) error, they will fix it by re-noticing, and reconvening the body and asked if the C-TRAN Board has that freedom.

Legal Counsel Ryan responded under the statute, the meeting is noticed by the Chief Administrative Officer.

DAVID MADORE MOTIONED AND JEANNE STEWART SECONDED, TO ONLY CONSIDER THE MAIN MOTION AFTER THE C-TRAN BOARD COMPOSITION REVIEW COMMITTEE HAS BEEN RECONVENED AND FOLLOWS A VALID PROCESS THAT CONFORMS TO ALL CRITERIA IN THE OPEN PUBLIC MEETING LAW.

Board Member Madore said the intent is to correct an error without resorting to legal action. An injunction has not yet been filed and this would allow an error to be corrected.

Board Member Lyle Lamb asked if the Bylaws are not adopted, can the Board conduct any further business.

Legal Counsel Wolfendale said yes, because C-TRAN Board action does not change the action of the Board Composition Review Committee or the declaratory judgment.

Board Member Madore asked if state statute specifies the sequence that the Board Composition Review Committee action outweighs C-TRAN Board Bylaws.

Legal Counsel Wolfendale said RCW 36.57A.055 specifies that the Board Composition Review entity is not connected to the C-TRAN Governing Board, and provides noticing of meetings through the Chief Administrative Officer.

Board Member McEnery-Ogle asked who served on the C-TRAN Board Composition Review Committee.

Legal Counsel Wolfendale said Clark County is represented in total (three), and one representative for each city and town in the service boundary.

Board Member McEnery-Ogle said the final vote to change the composition of the C-TRAN Board was seven in favor and three against, and asked Legal Counsel if the City of Vancouver had additional representation than any other jurisdiction on the committee.

Legal Counsel Wolfendale said no; each entity, with the exception of Clark County, only had one representative.

Board Member Madore asked if the C-TRAN Board failed to take action on the Bylaw amendment, would the composition of the Review Committee prevail.

Legal Counsel Wolfendale said the Bylaws must reflect the legal structure of the organization, as set by the Board Composition Review Committee.

Board Member Madore asked if the Bylaw amendment could be postponed long enough for legal guidance.

Legal Counsel Wolfendale said he does not see any legal reason to delay, as one of the amendments to the Bylaws reflects a Superior Court Declaratory Judgment.

THE VOTE ON THE MOTION TO AMEND FAILED WITH DAVID MADORE AND JEANNE STEWART VOTING AYE.

THE MAIN MOTION PASSED WITH DAVID MADORE AND JEANNE STEWART VOTING NAY.

Chair Irish asked that the Board Presentations and the CCAC Report be moved to the February 10, 2015 agenda.

CONSENT AGENDA

1. **APPROVAL OF BOARD MEETING MINUTES: DECEMBER 9, 2014**
2. **TRANSMITTAL OF CLAIMS NUMBERED 104274 THROUGH 104597 PLUS NET PAYROLL PAID IN DECEMBER 2014, IN THE TOTAL AMOUNT OF \$4,394,648.90**
3. **2015 INFORMATION TECHNOLOGY CONTRACT MAINTENANCE AGREEMENTS, STAFF REPORT #15-001**
C-TRAN retains service agreements for corrective and preventive maintenance activities, which are critical to continuous systems security and operations. In compliance with Board of Directors Policy PBD-003 Procurement, all service agreements exceeding \$25,000 must be brought to the C-TRAN Board of Directors for approval. This document condenses, into one staff report, Board approval for maintenance agreements with four vendors for necessary services to maintain critical information technology systems in 2015.
4. ~~**CONTRACT AWARD: CONSTRUCTION MANAGEMENT SERVICES FOURTH PLAIN BUS RAPID TRANSIT PROJECT CORRIDOR, VANCOUVER MALL TRANSIT CENTER, MAINTENANCE FACILITY, AND SOUTH LOT, STAFF REPORT #15-002**~~
Pulled from the Consent Agenda at the request of Board Member Madore.
5. **CONTRACT AWARD: FALL ARREST SUPPORT SYSTEM, STAFF REPORT #15-003**
C-TRAN's Maintenance building was commissioned in 1982. The building is a one-story concrete tilt-up building with a pre-stressed concrete roof structure. Maintenance employees are currently working on the roofs of buses at an elevation of 10 to 12 feet from the shop floor. The proposed Fall Arrest Support System is necessary to ensure employee safety in the event of a fall from the roof of a bus. In 2011 C-TRAN received bids and awarded a contract to install the first phase of the Fall Arrest Support System in the Maintenance Facility; this contract will complete the installation of the system throughout the remaining portions of the building that were not covered by the initial installation.

6. REQUEST FOR PROPOSALS CRITERIA: ALLISON HYBRID COMPONENTS AND OVERHAUL SERVICES, STAFF REPORT #15-004

C-TRAN is looking to establish a contract for hybrid component overhaul service and/or supply and delivery of new or reconditioned Allison Hybrid components for the Allison Hybrid fleet of buses. Establishing a long-term contract will ensure that C-TRAN has the parts and services on contract when they are needed to ensure that buses can be returned to service as soon as possible. C-TRAN's procurement policy requires all services of this nature to be competitively procured. Through a competitive process, C-TRAN plans to award a five year contract with one firm to provide overhaul service and hybrid components as needed.

JACK BURKMAN MOTIONED, BART HANSEN SECONDED, AND MOTION CARRIED TO APPROVE CONSENT AGENDA ITEMS NO. 1, 2, 3, 5, AND 6.

4. CONTRACT AWARD: CONSTRUCTION MANAGEMENT SERVICES FOURTH PLAIN BUS RAPID TRANSIT PROJECT CORRIDOR, VANCOUVER MALL TRANSIT CENTER, MAINTENANCE FACILITY, AND SOUTH LOT, STAFF REPORT #15-002

On September 9, 2014, the C-TRAN Board of Directors authorized the release of a Request for Statement of Qualifications for BRT related construction management services. The purpose of the procurement was to hire up to three firms to provide expertise and staff to manage the different construction components within the BRT project.

BART HANSEN MOTIONED, JACK BURKMAN SECONDED, AND MOTION CARRIED WITH DAVID MADORE AND JEANNE STEWART VOTING NAY, TO AUTHORIZE THE EXECUTIVE DIRECTOR/CEO TO EXECUTE A CONTRACT WITH HATCH MOTT MacDONALD FOR \$3,078,815, FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE FOURTH PLAIN BUS RAPID TRANSIT PROJECT.

ACTION ITEMS (Continued)

2. FARE POLICY PROPOSED CHANGES WITH FAREBOX IMPLEMENTATION, STAFF REPORT #15-006

The C-TRAN Board of Directors will take public comment on and schedule a public hearing for the February 10, 2015 Board Meeting to act on the proposed Discounted Day Pass for seniors, the disabled, and youth offered at fifty-percent of the regular price and an increase in valid transfer time to 2.5 hours, with all to be implemented with the introduction of the new fareboxes.

ANNE McENERNY-OGLE MOTIONED, JEANNE STEWART SECONDED, AND MOTION CARRIED TO DIRECT STAFF TO SEEK PUBLIC COMMENT ON THE DISCOUNTED DAY PASS AND TRANSFER POLICY PROPOSALS AND TO SCHEDULE A PUBLIC HEARING AND BOARD ACTION TO FOLLOW FOR THE FEBRUARY 10, 2015 MEETING.

PRESENTATIONS

2. PERFORMANCE MEASURES/DASHBOARD UPDATE, INFORMATION ONLY PAPER #15-03

At the August 12, 2014 C-TRAN Board of Director's meeting, staff proposed a set of performance measures organized around the agency's mission to provide safe, reliable, efficient mobility choices. The measures were designed to be reported on least annually to the Board of Directors and provide longitudinal and peer comparison data analysis. Where applicable, the data provided in this update is through the 3rd Quarter of 2014. Completed 2014 data is officially available after the financial audit in the first half of 2015.

Executive Director/CEO Hamm and Chief Finance Officer Diane O'Regan gave the presentation as outlined in the PowerPoint presentation attached to these minutes as Exhibit F.

Executive Director/CEO Hamm advised staff would provide quarterly updates to the Board and would post to C-TRAN's website.

Board Member Madore suggested a dashboard indicating on time performance by route, number of rides per bus, percentage of riders per population vs. other transit agencies, system cost per rider, and fare cost per ride compared to other agencies.

Executive Director/CEO Hamm added that C-TRAN's Service Guidelines will be part of the 2030 Plan Update.

From the Chair

None.

From the Executive Director/CEO

1. 2014 Goals & Objectives; 4th Quarter Update

Information only.

2. Procurement Policy Update, Information Only Paper #15-01

3. Purchasing Card Policy Update, Information Only Paper #15-02

Executive Director/CEO Hamm asked that Board Members review the proposed amendments to the Board Policies and provide comments to staff. These policy amendments will be brought back to the February 10, 2015 meeting for approval.

4. 2015 APTA Legislative Conference Attendance

Executive Director/CEO Hamm stated the adopted budget includes funding to send one Board Member to the APTA Legislative Conference in March 2015 in Washington DC. Board Members need to contact Chair Irish if they are interested.

From Legal Counsel

None.

ADJOURNMENT

Hearing no further business, the meeting was adjourned at 9:45 p.m.

Prepared By: Debbie Jermann, MMC

FILED

JUN 22 2015

3:45 PM
Scott G. Weber, Clerk, Clark Co.

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

Case No. 15-2-01144-1

FIRST AMENDED PETITION FOR WRIT OF REVIEW AND COMPLAINT FOR DECLARATORY JUDGMENT

(Action for Declaratory Judgment/Violation of Washington's Open Public Meetings Act)

NOT SUBJECT TO MANDATORY ARBITRATION

JOHN LEY, an individual, JOHN HALLINEN, an individual, GERALD R. HALLE, an individual, MICHAEL & CAROLE KELLEY, husband and wife, MICHAEL CONNER, an individual, LISA ROSS, an individual DEBORAH WARD, an individual PAT ANDERSON, an individual, BRIAN J. ROHAN, an individual, ROBERT NICHOLS, an individual, JOHN BURKE, an individual, ROBERT RAY LARIMER, JR., an individual, MARK HEAGY, an individual,

Plaintiffs,

v.

CLARK COUNTY PUBLIC TRANSPORTATION BENEFIT AREA, dba C-TRAN, a Washington Public Transportation Benefit Area, C-TRAN BOARD COMPOSITION REVIEW COMMITTEE, a statutorily-created special committee, C-TRAN BOARD OF DIRECTORS, GREG ANDERSON, C-TRAN Board of Directors Member, JACK BURKMAN, C-TRAN Board of Directors Member, BART HANSEN, C-TRAN Board of Directors Member, JIM IRISH, C-TRAN Board of Directors Chair, LYLE LAMB, C-TRAN Board of Directors Member, DAVID MADORE, C-TRAN Board of Directors Member, JENNIFER MCDANIEL, C-TRAN Board of Directors Member, ANNE MCENERNY-OGLE, C-TRAN Board of Directors Vice-Chair, JOHN SHREVES, C-TRAN Board of Directors Member, JEANNE STEWART, C-TRAN Board of Directors Member, TOM MIELKE, C-TRAN Board of Directors Member, CONNIE JO FREEMAN, C-TRAN Board of Directors Member, JEFF HAMM, chief administrative officer of the Clark County Public Transportation Benefit Area,

Defendants.

1 Plaintiffs allege as follows:

2 **I. INTRODUCTION**

3 1.

4 This is an action by residents of Clark County, Washington for declaratory relief,
 5 declaring that the Clark County Public Transportation Benefit District Board Composition
 6 Review Committee (“C-TRAN BCRC”), Clark County Public Transportation Benefit Area (“C-
 7 TRAN”), C-TRAN Chief Administrative Officer, Jeff Hamm (“Hamm”), and Greg Anderson,
 8 Jack Burkman, Bart Hansen, Jim Irish, Lyle Lamb, David Madore, Jennifer McDaniel, Anne
 9 Mcenery-Ogle, John Shreves, Jeanne Stewart, Tom Mielke, Connie Jo Freeman (collectively
 10 the “C-TRAN Board of Directors”) violated various provisions of Washington’s Open Public
 11 Meetings Act (“OPMA”) with respect to a meeting of the C-TRAN BCRC held on November
 12 18, 2014 (hereafter the “Meeting”), and took action at the Meeting in violation of RCW
 13 36.57A.055.

14 2.

15 Plaintiffs seek a declaration from this court that C-TRAN, C-TRAN BCRC, Hamm, and
 16 the C-TRAN Board of Directors violated Washington’s OPMA in one or more of the following
 17 ways: (1) failing to timely publish notice of the Meeting, including specifying the business to be
 18 transacted at the Meeting; (2) failing to prominently display notice of the Meeting at the meeting
 19 site; and (3) failing to provide timely notice of the Meeting to all local newspapers of general
 20 circulation that had previously requested in writing notice of such meetings. These actions
 21 constitute a violation of Washington’s OPMA under RCW 42.30.080.

22 3.

23 Plaintiffs additionally seek issuance of a declaration that the action of the C-TRAN
 24 BCRC at the November 18, 2014 Meeting violates RCW 36.57A.055 because the change in
 25 composition of the C-TRAN Board of Directors had not been determined to be appropriate by
 26 the C-TRAN BCRC, and no findings and/or statement of justification for recomposing the C-

1 TRAN Board of directors was provided.

2 4.

3 As a result of the above-referenced violations, Plaintiffs seek a judgment declaring: (1)
4 the actions of the C-TRAN BCRC during the Meeting to be null and void; (2) all actions of the
5 reconstituted C-TRAN Board of Directors following the Meeting to be null and void for the time
6 period of January 13, 2015 to present; (3) the actions of Hamm in failing to provide proper and
7 timely notice of the Meeting to be in violation of Washington’s OPMA, and (4) the actions of the
8 reconstituted C-TRAN Board of Directors to be subject to civil penalty for knowingly continuing
9 allowing business to be conducted that is in violation of Washington’s OPMA.

10 **II. JURISDICTION AND VENUE**

11 5.

12 Venue is proper in the Superior Court for the State of Washington in and for Clark
13 County because all acts complained of occurred in Clark County, Washington.

14 6.

15 This Court has jurisdiction pursuant RCW 42.30.130 for the OPMA claims, and pursuant
16 RCW 7.24.020 and Washington State Constitution, Article IV, Section 6 for the writ of review.

17 **III. PARTIES AND GENERAL ALLEGATIONS**

18 7.

19 Each Plaintiff has a primary place of residence within Clark County and the C-TRAN
20 service area. Each Plaintiff pays C-TRAN sales and use tax on everyday purchases. Each
21 Plaintiff is a citizen of the state of Washington with an interest in the actions and conduct of C-
22 TRAN as it relates to the management and administration of C-TRAN affairs in and around their
23 primary place of residence within Clark County and the C-TRAN service area.

24 8.

25 Defendant C-TRAN is a Public Transportation Benefit Area, a municipal corporation of
26 the state of Washington created pursuant to Chapter 36.57A of the Revised Code of Washington.

1 ///

2 9.

3 The meetings and conduct of C-TRAN and its Board of Directors are subject to
4 compliance with Washington's OPMA, which is found under RCW 42.30 *et seq.*

5 10.

6 The C-TRAN BCRC is a statutorily-created special committee charged with the
7 responsibility to every four years: (1) review the composition of the C-TRAN Board of
8 Directors; (2) determine whether a change in the composition of the C-TRAN Board of Directors
9 is appropriate; and (3) change the composition of the C-TRAN Board of Directors so long as
10 such change is deemed appropriate. RCW 36.57A.055. The C-TRAN BCRC meetings are
11 governed by Washington's OPMA. The actions of the C-TRAN BCRC can be undertaken
12 independently from one another, in multiple meetings or sequentially in a single meeting. The
13 statute does not require a specific schedule, nor mandate a change in C-TRAN Board of
14 Directors composition at or by any particular time.

15 11.

16 Defendant Jeff Hamm is the chief administrative officer of C-TRAN. His responsibilities
17 as the chief administrative officer of C-TRAN include providing for proper notice of C-TRAN
18 BCRC special meetings pursuant to RCW 36.57A.055 and RCW 42.30.080.

19 12.

20 The purpose of the OPMA is to ensure that public bodies make decisions openly.

21 "The legislature finds and declares that all public commissions,
22 boards, councils, committees, subcommittees, departments,
23 divisions, offices, and all other public agencies of this state and
24 subdivisions thereof exist to aid in the conduct of the people's
25 business. It is the intent of this chapter that their actions be taken
26 openly and that their deliberations be conducted openly.

25 The people of this state do not yield their sovereignty to the
26 agencies which serve them. The people, in delegating authority, do
not give their public servants the right to decide what is good for

1 the people to know and what is not good for them to know. The
2 people insist on remaining informed so that they may retain control
3 over the instruments they have created.” RCW 42.30.010
(emphasis added).

13.

4 The purposes of the OPMA are remedial and are to be liberally construed under
5 RCW42.30.910. Any exceptions to the requirements of the OPMA are to be narrowly construed.

14.

7 The November 18, 2014 Meeting of the C-TRAN BCRC was a “special meeting.”
8 Pursuant to RCW 42.30.080, the notice of the Meeting was required to (among other things): (1)
9 state the business to be transacted during the Meeting; (2) be prominently displayed at the site of
10 the Meeting; (3) be delivered by mail, fax, or electronic mail to each local newspaper of general
11 circulation which had previously submitted a written request to be notified of such meetings; and
12 (4) be delivered or posted at least twenty days before the Meeting in order to comply with RCW
13 36.57A.055.

15.

15 On or around October 9, 2014, notice of the Meeting was published on the C-TRAN
16 website. This notice did not include any kind of agenda or statement of business to be
17 conducted, and included only the following statements:

18 **“PUBLIC NOTICE**
19 **C-TRAN BOARD COMPOSITION REVIEW**
20 **COMMITTEE MEETING**

20 The C-TRAN Board Composition Review Committee
21 meeting will be held on Tuesday, November 18, 2014 at the
22 Vancouver Community Library, Columbia Room, 901 C
Street, Vancouver, Washington. The Board Composition
Meeting will be called to order at 4:00 p.m.

23 **NOTE:** Persons requiring an interpreter for the
24 hearing impaired at a C-TRAN Board meeting should
25 contact Debbie Jermann, C-TRAN’s Executive
26 Assistant/Clerk of the Board, at 695-4494 or TTY 695-
2760, 24 hours prior to the meeting so arrangements can be
made.

October 15

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16.

On or around October 15, 2014, notice of the Meeting was published in The Columbian newspaper. This notice also failed to include any kind of agenda or statement of the business to be transacted at the Meeting.

17.

On or around November 12, 2014, notice of the Meeting was re-published on the C-TRAN website. This notice included an agenda for the Meeting with multiple items of business to be transacted, including: (1) election of a Chair Pro Tem for the C-TRAN BCRC; (2) approval of minutes from the December 13, 2013 meeting of the C-TRAN BCRC; (3) citizen communication to the C-TRAN BCRC; and (4) continuance of discussion and possible action with regards to the composition of the C-TRAN Board of Directors.

18.

Upon information and belief, the notice and agenda published on the C-TRAN website as referenced above were never circulated for publication in a local newspaper of general circulation.

19.

On November 18, 2014, the Meeting took place at the Vancouver Community Library. Upon information and belief, notice of the Meeting was not placed at the meeting site.

20.

On or around November 19, 2014 (one day after the Meeting) notice of the Meeting was published in The Reflector, a local newspaper of general circulation for the City of Battle Ground, and a regular recipient of legal notice for all C-TRAN public meetings. Upon information and belief, the Reflector had previously submitted a request in writing to C-TRAN and/or the C-TRAN BCRC to be informed of such meetings.

1 21.

2 During the Meeting, defendant C-TRAN BCRC took action to change the composition of
3 the then-existing C-TRAN Board of Directors. In particular, the C-TRAN BCRC voted to
4 eliminate one of Clark County's seats on the C-TRAN Board of Directors. The elimination of
5 the Clark County seat resulted in a change to the internal voting rules of the C-TRAN Board of
6 Directors. In particular, the actions of the C-TRAN BCRC reconfigured the level of
7 participation of the City of Vancouver and Clark County in C-TRAN's governance. No agenda
8 item proposing such a possible action was published in any form.

9 22.

10 At no time during or subsequent to the Meeting did the C-TRAN BCRC make any verbal
11 or written findings that the adopted change to the composition of the C-TRAN Board of
12 Directors was determined to be appropriate.

13 23.

14 Plaintiffs as residents of Clark County and users of the C-TRAN public transportation
15 system have an interest in understanding the basis for the C-TRAN Board of Directors'
16 composition, and in maintaining the integrity of the composition of the C-TRAN Board of
17 Directors in order to reflect adequate representation of an area subject to C-TRAN's taxing
18 authority.

19 24.

20 On January 13, 2015, the reconstituted C-TRAN Board of Directors held its first meeting
21 following the November 2014 Meeting of the C-TRAN BCRC. Hamm was present at this
22 January 2015 along with the C-TRAN Board of Directors. During that meeting, C-TRAN, the
23 C-TRAN Board of Directors, and Hamm were notified that: (1) the notice for the November
24 2014 Meeting of the C-TRAN BCRC was inconsistent with OPMA requirements; (2) the
25 decision of the C-TRAN BCRC to change the make-up of the C-TRAN Board of Directors was
26 null and void; and (3) the C-TRAN Board of Directors should retain the make-up that preceded

1 the Meeting until the C-TRAN BCRC took contrary action in a meeting held consistent with
2 OPMA requirements.

3 25.

4 C-TRAN, the reconstituted C-TRAN Board of Directors, and Hamm disregarded the
5 above-referenced legal concerns. Defendants continue to disregard the illegality of the actions of
6 the C-TRAN BCRC during the November 2014 Meeting, including the fact that the C-TRAN
7 BCRC's actions during the Meeting are null and void for failure to comply with Washington's
8 OPMA.

9 26.

10 To this day, defendants continue to do business under the reconstituted C-TRAN Board
11 of Directors.

12 **IV. CAUSES OF ACTION**

13 **A. First Cause of Action (Declaratory Judgment)**

14 27.

15 Plaintiffs re-allege all paragraphs above as if fully set forth herein.

16 28.

17 Plaintiffs are entitled to judgment based upon RCW 7.24.020 which states that persons
18 whose rights are affected by a statute may bring questions of construction or validity under the
19 statute and obtain a declaration of rights, status or other legal relations.

20 29.

21 Plaintiffs have certain rights granted by statute, including the right that C-TRAN, the C-
22 TRAN BCRC, C-TRAN Board of Directors, and Hamm comply with the provisions of
23 Washington's OPMA.

24 30.

25 Plaintiffs are entitled to a judgment declaring the November 18, 2014 Meeting of the C-
26 TRAN BCRC to be in violation of Washington's OPMA for failure to comply with the special

1 meeting notice requirements under RCW 42.30.080, as set forth above.

2 31.

3 Plaintiffs are also entitled to a declaration that the actions of the C-TRAN BCRC during
4 its November 18, 2014 meeting are null and void pursuant to RCW 42.30.060(1) and that the C-
5 TRAN Board of Directors is not presently legally constituted for failure to provide notice of the
6 meeting consistent with Washington’s OPMA.

7 32.

8 Plaintiffs are also entitled to a declaration that the actions of the reconstituted C-TRAN
9 Board of Directors from January 13, 2015 to the present are null and void, and that the C-TRAN
10 Board of Directors should be issued a civil penalty for their knowing violation of Washington’s
11 OMPA.

12 33.

13 Plaintiffs are further entitled to a declaration that Hamm’s actions in failing to provide
14 proper and timely notice of the November 2014 Meeting of the BCRC constitute a violation of
15 Washington’s OPMA, and his obligations under RCW 36.57A.055.

16 **B. Second Cause of Action (Statutory and Constitutional Writs of Review)**

17 34.

18 Plaintiffs re-allege all paragraphs above as if fully set forth herein.

19 35.

20 Pursuant to RCW 7.16, plaintiffs request that this Court grant a statutory writ of review
21 finding the actions of the C-TRAN BCRC at the November 18, 2014 Meeting a violation of
22 RCW 36.57A.055 on the grounds the C-TRAN BCRC failed to provide any findings or
23 explanations justifying a change in the composition of the C-TRAN Board of Directors, the
24 nature of such a change and that such change would be appropriate as required under RCW
25 36.57A.055.

26

36.

Alternatively, Plaintiffs request that this Court, pursuant to the Washington State Constitution, Article IV, Section 6, grant a constitutional writ of review and allege, in addition to the foregoing allegations, that the fundamental right of Plaintiffs to be free of clearly erroneous and illegal actions warrants the exercise of this Court’s inherent authority to review the action of the C-TRAN BCRC and determine that the change to the composition of the C-TRAN Board of Directors violates RCW 36.57A.055 because the change in composition of the C-TRAN Board of Directors was not determined to be appropriate by the C-TRAN BCRC as required by RCW 36.57A.055.

VI. PRAYER FOR RELIEF

Plaintiffs request the following relief:

1. Entry of a Judgment declaring the November 18, 2014 actions of the C-TRAN Board Composition Review Committee null and void;
 2. Entry of a Judgment declaring the actions of the C-TRAN Board of Directors null and void for the time periods January 13, 2015 to present, including the illegal composition of the C-TRAN Board of Directors;
 3. Entry of a Judgment declaring that the C-TRAN Board of Directors knowingly violated Washington’s OPMA and therefore should be issued a civil penalty in the amount of \$100.00 each pursuant to RCW 42.30.120;
 4. Entry of a Judgment declaring that Hamm violated Washington’s OPMA in failing to provide proper notice of the November 2014 Meeting of the C-TRAN BCRC;
 5. Entry of a Judgment in favor of plaintiffs awarding attorney’s fees and other costs incurred in maintaining this action as allowed by RCW 42.360.120; and
- ////
- ////
- ////

6. Such other relief as the Court deems just and equitable.

DATED: June 22, 2015.

Respectfully submitted,

BALL JANIK LLP

By: *Damien R. Hall*

Damien R. Hall, WSBA No. 47688
dhall@balljanik.com

Adele J. Ridenour, WSBA No. 35939
aridenour@balljanik.com

101 SW Main Street, Suite 1100
Portland, OR 97204
(503) 228-2525
(503) 295-1058 (fax)

Attorneys for Plaintiffs

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FILED

2015 SEP 21 AM 9:28 The Honorable David E. Gregerson
Hearing Date: September 4, 2015 @ 9:00

SCOTT G. WESER, CLERK
CLARK COUNTY

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLARK

JOHN LEY, an individual, et al.,

Plaintiffs,

v.

CLARK COUNTY PUBLIC
TRANSPORTATION BENEFIT AREA,
dba C-TRAN, a Washington Public
Transportation Benefit Area, et al.,

Defendants.

No. 15-2-01144-1

ORDER GRANTING MOTION
TO DISMISS

PRESENTATION WAIVED

This matter came before the Court on the following defendants' Motion to Dismiss: (1) Clark County Public Transportation Benefit Area's ("C-TRAN"); (2) C-TRAN Board of Directors; (3) Mr. Greg Anderson; (4) Mr. Jack Burkman; (5) Mr. Bart Hansen; (6) Mr. Jim Irish; (7) Mr. Lyle Lamb; (8) Mr. David Madore; (9) Ms. Jennifer McDaniel; (10) Ms. Anne McEnery-Ogle; (11) Mr. John Shreves; (12) Ms. Jeanne Stewart; (13) Ms. Connie Jo Freeman; and, (14) Mr. Jeff Hamm. The Court has reviewed and considered the following:

1. Defendants' Motion to Dismiss and the appendixes and the authorities cited therein;
2. The Joinder of Defendant Connie Jo Freeman;

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS - 1

K.R.L. GATES LLP
925 1 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 621-7580
FACSIMILE: (206) 623-7022

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- 3. Plaintiffs' Response to Defendants' Motion to Dismiss and the materials and authorities cited therein;
- 4. Defendants' Reply and the materials and authorities cited therein, along with the following exhibits and/or materials attached thereto:
 - a. Declaration of Adele J. Ridenour, with all accompanying exhibits;
 - b. Declaration of Records Custodian of the Vancouver Community Library, with all accompanying exhibits;
 - c. Declaration of Records Custodian of the Reflector, with all accompanying exhibits;
 - d. Declaration of Records Custodian of the Columbian, with all accompanying exhibits;
- 5. Plaintiffs' First Amended Complaint; and
- 6. The pleadings and papers on file in this matter.

The court heard oral argument by the parties on September 4, 2015. Having determined that there is no hypothetical set of facts that could conceivably be raised by the First Amended Complaint to support a legally sufficient claim, the Court GRANTS Defendants' Motion to Dismiss for the following reasons:

- 1. As a matter of law, the plain language of RCW 36.57A.055 does not require any particular form of an express finding of whether the Board Composition Review Committee ("BCRC") deemed any changes it made to the C-TRAN Board of Directors "appropriate" and therefore the BCRC complied with the requirements of the RCW 36.57A.055;

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- 2. As a matter of law, the BCRC is not a “public agency” as that term is defined in RCW 42.30.020(1) and therefore the Open Public Meetings Act (Chapter 42.30 RCW) (“OPMA”), does not apply to the BCRC;
- 3. Plaintiffs do not allege any facts or legal theory that any C-TRAN Board meeting which occurred in calendar year 2015 failed to comply with the notice provisions of the OPMA, and therefore any claims against individual C-TRAN Board Members fail as a matter of law;
- 4. Mr. Jeff Hamm complied with the notice requirements of RCW 36.57A.055 and is not a member of any “governing body” with the ability to take any “action” as those terms are defined in the OPMA; and
- 5. As a matter of law, the C-TRAN Board of Directors is not a separate legal entity subject to suit and naming them in this suit is duplicative and unnecessary.

The Court also concludes that the materials that the parties submitted in connection with their CR 12(b)(6) motion are properly considered on a CR 12(b)(6) motion because they are public records properly subject to judicial notice under Evidence Rule 201(b) and because these public documents are incorporated into Plaintiffs’ Amended Complaint.

Based on the foregoing, the Court ORDERS that all of Plaintiffs’ claims be dismissed with prejudice, specifically:

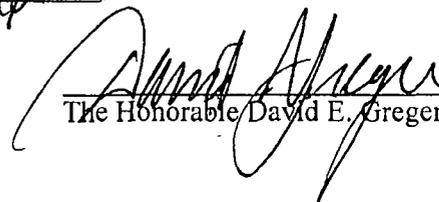
- 1. Plaintiffs’ claim for declaratory judgment that the November 18, 2014 meeting of the BCRC violated the OPMA and that actions taken at that meeting are null and void;

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- 2. Plaintiffs' claim for declaratory judgment that all subsequent actions of the C-TRAN Board of Directors are null and void and that the Board of Directors is not presently legally constituted;
- 3. Plaintiffs' claim that the individual members of the C-TRAN Board of Directors should be issued civil penalties for their knowing violation of the OPMA;
- 4. Plaintiffs' claim for declaratory judgment that Mr. Hamm violated the OPMA and RCW 36.57A.055;
- 5. Plaintiffs' request for a statutory writ of review finding that the actions of the BCRC at the November 18, 2014 meeting violated RCW 36.57A.055; and
- 6. Plaintiffs' request for a constitutional writ of review finding that the actions of the BCRC violated RCW 36.57A.055.

IT IS SO ORDERED

Entered this 21 day of Sept, 2015.



 The Honorable David E. Gregerson

Presented by:

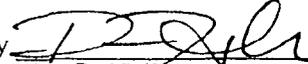
K&L GATES LLP

By 

 Michael K. Ryan, WSBA # 32091
 Attorneys for Defendants

Approved as to form and content; formal presentation waived:

BALL JANIK LLP

By 

 Damien R. Hall, WSBA # 47688
 Adele J. Ridenour, WSBA # 35939
 Attorneys for Plaintiffs

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS - 4

K&L GATES LLP
 925 FOURTH AVENUE
 SUITE 2900
 SEATTLE, WASHINGTON 98104-1158
 TELEPHONE: (206) 623-7580
 FACSIMILE (206) 623-7022

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